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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OGM. Inc., a California corporation; GROUP PRO INC., a California corporation; GROUP PRO INC., a California corporation dba KRONBORG MUSIC ; GROUP PRO INC., a California corporation dba KRONBORG/ DOLLHOUSE PUBLISHING; GROUP PRO INC., a California corporation dba GLOBAL MUSIC VS; GROUP PRO INC., a California corporation dba DOLLHOUSE MUSIC; and OLE GEORG, an individual.

Plaintiffs,

vs.

TELEVISA, S.A. DE C.V., a Mexican corporation; XENON PICTURES, INC. a California corporation; LIONS GATE ENTERTAINMENT INC., a Delaware corporation; TELEVISA INTERNATIONAL MARKETING GROUP, INC., a California corporation; UNIVISION COMMUNICATIONS, INC., a Delaware corporation; GALAVISION, INC., a Delaware corporation; and UNIVISION TELEVISION GROUP, INC., a Delaware corporation and DOES 1-100, inclusive.

Defendants.

| Case No.: CV08-05742 JFW (JCx)

**SPECIALLY-APPEARING
DEFENDANT TELEVISA, S.A.
DE C.V.'S NOTICE OF MOTION
AND MOTION TO DISMISS
UNDER FRCP 12(b)(5) FOR
DEFICIENT SERVICE OF
PROCESS**

[Declaration of Dylan Ruga filed, and
[PROPOSED] Order lodged
herewith]

DATE: April 20, 2009
TIME: 1:30 p.m.
PLACE: Courtroom 16

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Please take notice that on April 20, 2009, at 1:30 p.m., or as soon thereafter
3 as this motion may be heard, at the United States District Court for the Central
4 District of California, located at 312 N. Spring Street, Courtroom 16, Los Angeles,
5 California 90012, specially-appearing defendant Televisa, S.A. de C.V.
6 (“Televisa”) will, and hereby does, move this Court for an order dismissing the
7 Complaint under FRCP 12(b)(5) for deficient service of process.

8 This motion is being made pursuant to Rule 12(b)(5) of the Federal Rules of
9 Civil Procedure on the grounds that Plaintiff’s purported service on Televisa, a
10 foreign corporation, was invalid under Rule 4(h) of the Federal Rules of Civil
11 Procedure and the Hague Convention.

12 Certification: Pursuant to Local Rule 7-3, Televisa’s counsel met and
13 conferred with Plaintiff’s counsel on March 3, 2009 regarding the substance of the
14 instant motion. The parties, however, were unable to resolve their differences.

15 This motion is based upon this Notice of Motion and Motion, the
16 Declaration of Dylan Ruga filed herewith, the Appendix of Non-California
17 Authorities filed herewith, the pleadings on file in this action, and upon such other
18 evidence and argument as may be presented prior to or at the time of the hearing
19 on this matter.

20 Dated: March 16, 2009

21 STEPTOE & JOHNSON LLP
22 Seong Kim
23 Dylan Ruga

24 By: _____ /S/
25 DYLAN RUGA
26 Attorneys for Specially-Appearing
27 Defendant
28 Televisa, S.A. de C.V.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs claim to have served defendant Televisa, S.A. de C.V., a Mexican
4 corporation, with the Summons and Complaint through the Hague Convention by
5 registered mail and by personal service via a private process server. Even ignoring
6 the problems with the claimed methods of service (including the fact that the
7 person allegedly served does not work for Televisa), these purported methods of
8 service are invalid under the Hague Convention.

9 When Mexico signed the Hague Convention in 1999, it exercised its right to
10 object to service on its residents via registered mail or personal service.¹ Thus, the
11 **only method** of serving Mexican residents is by transmitting the relevant
12 documents to the Mexican Central Authority,² which is required to complete the
13 service.

14 Because Plaintiffs failed to comply with the Hague Convention and
15 Mexico's mandate that service be effected only through its Central Authority, the
16 purported service on Televisa was invalid and must be quashed.

17 **II. FACTUAL BACKGROUND**

18 **A. Background Facts Relating to the Complaint**

19 Televisa, S.A. de C.V. ("Televisa") is a Mexican corporation, with no
20 offices in this country. (Ruga Decl., ¶ 2.)

21
22 ¹ Mexico is not alone in this regard; at least 25 countries have objected to service via registered
23 mail and/or personal service. See Ruga Decl., ¶ 11, Ex. G at pp. 107-11.

24 ² The "Central Authority" is an agency specifically established by each country that has joined
25 the Hague Convention for the purpose of receiving requests for international service of process
26 and to effectuate the service on its residents. In Mexico, the Central Authority is the Ministry of
27 Foreign Affairs. See www.sre.gob.mx/english/. In the United States, the Department of Justice
28 in Washington, D.C. is the Central Authority. (Ruga Decl., ¶ 11, Ex. G at p. 106.)

1 The Complaint in this action was filed on September 3, 2008 by OGM, Inc.
2 and others (collectively, "Plaintiffs") against Televisa and others for alleged
3 copyright infringement and breach of contract. Plaintiffs claim that Televisa
4 infringed upon their copyrights by producing, licensing, broadcasting and
5 distributing television programs containing Plaintiffs' "production music" (*i.e.*,
6 incidental sound effects and clips used as background in most television
7 programs). (Compl., ¶ 18.)

8 Plaintiffs admit, however, that they licensed these same rights to Televisa by
9 written agreement in 2002. (Compl., ¶ 25) ("On or about November 1, 2002 OGM
10 entered into an Annual Blanket License Agreement with Defendant [Televisa]
11 whereby OGM authorized [Televisa] to embody the Compositions and the
12 Recordings in television programs for non-theatrical distribution only."). Plaintiffs
13 contend that Televisa breached the license agreement by allegedly failing to
14 provide accurate cue-sheets (reports summarizing the use of the production music
15 in programs) and thus Televisa's use constituted copyright infringement,
16 notwithstanding the written Annual Blanket License Agreement. (Compl., ¶¶ 26-
17 28.) Further, Plaintiffs allege that Televisa did not have the right to distribute
18 programs containing Plaintiffs' production music by DVDs, VHS or other home
19 video devices. (Compl., ¶ 16).

20 Defendants disagree. The first license between the parties dates back to at
21 least 1990 and Plaintiffs continued to honor the license agreement for over a
22 decade after Plaintiffs learned of the allegedly insufficient cue sheets.
23 Additionally, Defendants contend that Plaintiffs are barred from maintaining their
24 current claims by the statute of limitations, laches, equitable estoppel,
25 acquiescence, and other related defenses for the same reason. Defendants further
26 contend that they have the right to distribute programs containing Plaintiffs'
27 production music by DVDs, VHS or other home video devices because Plaintiffs
28 clearly licensed to Televisa "all *non-theatrical* rights . . . excluding internet" for

1 Plaintiffs' production music, which by definition includes home video. Finally,
2 Defendants believe that Plaintiffs may not be the actual owners of the production
3 music at issue in this litigation.

4 **B. Plaintiffs' First Deficient Attempt at Service**

5 On November 20, 2008, Plaintiffs' counsel allegedly mailed a copy of the
6 Summons and Complaint to Miguel Gutierrez Cervantez via registered mail, return
7 receipt requested. (Decl. of Gerald B. Weiner, Docket No. 27 at p. 45.) However,
8 as explained below, the Hague Convention, as agreed to by Mexico, does *not* allow
9 for service of process by mail. *See infra* at § IV(C).

10 Moreover, Plaintiffs' declaration is deficient for other reasons. Plaintiffs'
11 counsel declared that he is "informed and believe[s] . . . that Miguel Gutierrez
12 Cervantes is [Televisa's] representative." (Decl. of Gerald B. Weiner, Docket No.
13 27 at p. 45.) Plaintiffs' counsel, however, is misinformed because Miguel
14 Gutierrez Cervantes has not been employed by Televisa since early 2008. (Ruga
15 Decl., ¶ 3.) It is clear that the documents were not delivered to Mr. Cervantes
16 because the return receipt allegedly received by Plaintiffs' counsel in January 2009
17 reflects that the Summons and Complaint were received by a person named
18 Armando Verdusco on December 15, 2008. (Decl. of Gerald B. Weiner, Docket
19 No. 27 at p. 45.) Plaintiff's counsel has not declared who Mr. Verdusco is or why
20 he is allegedly authorized to accept service on behalf of Televisa or, for that
21 matter, receive mail on behalf of Mr. Gutierrez Cervantes. Plaintiff bears the
22 burden of proving this. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

23 **C. Plaintiffs' Second and Last Deficient Attempt at Service**

24 On January 30, 2009, Arturo Sobrino Franco, a private Mexican notary,
25 allegedly delivered the Summons and Complaint to two unknown persons in the
26 "correspondence" area of Televisa. (Decl. of Arturo Sobrino Franco, Docket No.
27 26 at p. 3.) As explained below, the Hague Convention, as agreed to by Mexico,
28

1 does *not* allow for service of process by personal service by private unauthorized
 2 individuals outside the Central Authority. *See infra* at § IV(D).

3 Moreover, this declaration also is deficient on its face. Plaintiff fails to
 4 describe what the “correspondence” area of Televisa is or why anyone in that
 5 department allegedly is authorized to accept service on behalf of Televisa.
 6 Televisa does not know to what area Plaintiffs are referring. As a matter of law,
 7 Plaintiffs have the burden of establishing that it has properly effected service.
 8 *Brockmeyer*, 383 F.3d at 801. Plaintiffs have failed to satisfy this burden.

9 On February 23, 2009, Plaintiffs filed a Proof of Service that describes the
 10 foregoing transactions and purports to demonstrate that Televisa has been served
 11 with the Summons and Complaint. For reasons set forth below, however, the
 12 purported service was invalid and must be quashed.

13 III. **LEGAL STANDARDS**

14 A. **Legal Standard Under FRCP 12(b)(5) Applicable to Motions to** **Quash Purported Service of Process**

15 A court may not exercise personal jurisdiction over a defendant without
 16 proper service of process. *Omni Capital Int'l, Ltd. v. Wolff & Co.*, 484 U.S. 97,
 17 104 (1987). Once service of process has been challenged by a motion to dismiss
 18 under Rule 12(b)(5) of the Federal Rules of Civil Procedure, **plaintiff bears the**
 19 **burden of proving that service was valid.** *Brockmeyer*, 383 F.3d at 801.

20 B. **Legal Standard Under FRCP 41.1 Applicable to Interpreting** **Foreign Law**

21 Rule 41.1 of the Federal Rules of Civil Procedure applies when, as in the
 22 instant case, the Court must interpret foreign law. As the Ninth Circuit has
 23 explained, the Rule is designed to give the Court “wide latitude” in determining
 24 issues of foreign law. *Jinro America Inc. v. Secure Investments, Inc.*, 266 F.3d
 25 993, 1000 (9th Cir. 2001).

1 Among other things, the Court is free to conduct its own research and may
 2 consider any relevant evidence, whether or not such evidence is admissible under
 3 the Federal Rules of Evidence. Fed. R. Civ. P. 41.1 (“In determining foreign law,
 4 the court may consider any relevant material or source, including testimony,
 5 whether or not submitted by a party or admissible under the Federal Rules of
 6 Evidence.”) & 1966 advis. commit. note (“In further recognition of the peculiar
 7 nature of the issue of foreign law, [Rule 41.1] provides that in determining this law
 8 the court is not limited by material presented by the parties; it may engage in its
 9 own research and consider any relevant material thus found.”).

10 **IV. DISCUSSION**

11 **A. Compliance with the Hague Convention is Mandatory**

12 Rule 4(h)(2) of the Federal Rules of Civil Procedure applies to service on
 13 foreign corporations. Fed. R. Civ. P. 4(h)(2). The Rule states that a foreign
 14 corporation may be served in a manner described in Rule 4(f) for service on an
 15 individual in a foreign country. *Id.*

16 Rule 4(f)(1) makes clear that a party in a foreign country only can be served
 17 by an “internationally agreed means of service.” While Rule 4(f)(2) and (3) go
 18 onto describe other methods of service, they also make clear that those other
 19 methods are *not* available if they are prohibited by an international agreement for
 20 service of process.³

21
 22 ³ (f) Serving an Individual in a Foreign Country.

23 Unless federal law provides otherwise, an individual - other than a minor, an
 24 incompetent person, or a person whose waiver has been filed - may be
 25 served at a place not within any judicial district of the United States:
 26 (1) *by any internationally agreed means of service* that is reasonably
 calculated to give notice, such as those authorized by the Hague Convention
 on the Service Abroad of Judicial and Extrajudicial Documents;
 27 (2) *if there is* no internationally agreed means, or if an international agreement
 allows but does not specify other means, by a method that is reasonably calculated
 to give notice . . .
 28 (3) by other means *not prohibited by international agreement*, as the court orders.

Fed. R. Civ. P. 4(f) (emphasis added)

1 In this case, there is an “internationally agreed means” of service between
2 United States and Mexico, namely the Convention on the Service Abroad of
3 Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague
4 Convention”). Thus, because United States and Mexico both are signatories, the
5 Hague Convention provides the *exclusive means* by which Plaintiffs can serve
6 Televisa in Mexico. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694,
7 705 (1988) (“[C]ompliance with the Convention is mandatory in all cases to which
8 it applies.”); *Brockmeyer*, 383 F.3d at 801; *Universal Trading & Inv. Co. v.
9 Kiritchenko*, 2007 WL 660083 at *2 (N.D. Cal., Feb. 28, 2007) (“Here, the United
10 States, the British Virgin Islands, and Antigua are signatories to the Hague
11 Convention. Accordingly, because service of process was attempted abroad, the
12 validity of that service is controlled by the Hague Convention.”) (internal citations
13 and punctuation omitted).

14 It follows that the purported service of process on Televisa must be quashed
15 if Plaintiff did not comply with the procedures set forth in the Hague Convention.⁴

16 **B. Methods of Service Allowed Under the Hague Convention**

17 When Mexico signed the Hague Convention, Mexico exercised its right to
18 object to all methods of serving its citizens except for one – service through
19 Mexico’s Central Authority.⁵ Mexico is not alone in this regard; at least 25

21 ⁴ Plaintiffs’ counsel agrees. During the parties’ meet and confer conference, Plaintiffs’ counsel,
22 Henry Self, confirmed that the service on Televisa is valid only if it was accomplished pursuant
23 to the Hague Convention. (Ruga Decl., ¶ 4.)

24 ⁵ There are two primary methods of service under the Hague Convention: (1) service
25 through a country’s Central Authority, and (2) “alternative methods,” which include service by
26 mail or personal delivery. As explained below, countries must allow service through their
27 Central Authority, but may object to service by alternative methods.

1 countries similarly have objected to alternative methods of service under the Hague
2 Convention. (Ruga Decl., ¶ 11, Ex. G at pp. 107-11.)

3 Articles 2-6 of the Hague Convention set forth the procedure for service of
4 process through a country's central authority. As the United States Supreme Court
5 explained, each signing country is required to establish a central authority to
6 receive requests for service of documents from other countries (which, in Mexico's
7 case, is its Ministry of Foreign Affairs). *Schlunk*, 486 U.S. at 698. According to
8 Articles 2-6 of the Convention, once a central authority receives a request for
9 service in the proper form, it must serve the documents by a method prescribed by
10 the internal law of the receiving country or by a method designated by the
11 requester that is compatible with that country's laws. *Id.* at 699. The central
12 authority must then provide a certificate of service that conforms to a model
13 established by the Hague Convention. *Id.*

14 In addition to the mandatory method of service through the central authority,
15 Articles 10(a)-(c) of the Hague Convention give each signing country the *option* to
16 permit (or to object) to other methods of service. Specifically, these Articles state
17 that, **unless a contracting state objects**, service of foreign documents also may be
18 effected by mail or by personal service. (Ruga Decl., ¶ 5, Ex. A at pp. 7-8.)
19 Again, unlike the method for service through the central authority, signing
20 countries are *not* required to permit service of process through these alternative
21 means.

22 C. Mexico Objected to All Alternative Methods of Service Under
23 Article 10 of the Hague Convention; Thus, the Only Method
24 Allowed is Through Mexico's Central Authority

25 When Mexico acceded to the Hague Convention in 1999, it filed with the
26 Ministry of Foreign Affairs of the Netherlands declarations in Spanish that
27 specifically and unequivocally objected to all alternative methods of service under
28 Articles 10(a)-(c), so that *use of the Mexican Central Authority is mandatory in all*

1 cases involving international service on Mexican residents. (Ruga Decl., ¶ 6, Ex.
 2 B at p. 26 (official Mexican declarations submitted to the Ministry of Foreign
 3 Affairs of the Netherlands on November 2, 1999) & Ex. C, p. 41 (certified English
 4 translation of official Mexican declarations) & Ex. F, pp. 85-86 (Charles B.
 5 Campbell, *No Sirve: The Invalidity of Service of Process Abroad by Mail or*
 6 *Private Process Server on Parties in Mexico Under the Hague Service Convention*
 7 [hereinafter “Campbell”], available for download at: <http://ssrn.com/abstract=1347003> (last visited March 3, 2009)).

9 The United States Department of State’s (the “State Department”) Foreign
 10 Affairs Manual (FAM) confirms that Mexico lodged objections to Article 10(a) of
 11 the Convention and, therefore, **service of process in Mexico by registered mail is**
 12 **prohibited.** (Ruga Decl., ¶ 11, Ex. G at pp. 103-04 & 106-11 (7 FAM 951,
 13 available at <http://www.state.gov/documents/organization/86743.pdf> (last visited
 14 March 10, 2009)).

15 D. **The Confusion in Other Districts Caused by the Unofficial**
 16 **“Courtesy” English Translation of Mexico’s Objection Proffered**
 17 **by the Netherlands**

18 When Mexico lodged its objections to the alternative methods of service, the
 19 Ministry of Foreign Affairs of the Netherlands prepared a “courtesy translation” of
 20 Mexico’s declarations from the original Spanish text into English and French.
 21 (Ruga Decl., ¶ 8, Ex. D, pp. 68-71 (Courtesy translations submitted by the Ministry
 22 of Foreign Affairs of the Netherlands and maintained in the *United Nations Treaty*
 23 *Series*) & Ruga Decl. at Ex. F, p. 86 (Campbell, p. 11). In 2003, the United
 24 Nations published Mexico’s original declarations (which are binding), along with
 25 the courtesy English and French translations (which are not binding) of these
 26 declarations in the *United Nations Treaty Series. Id.*

27 Unfortunately, as described below, the “courtesy” English translation of the
 28 Mexican declarations is wrong. The unofficial English translation adds the

1 additional words “through diplomatic or consular agents,” which do not appear in
 2 the original Mexican declaration. These additional words make it appear that
 3 Mexico does *not* object to service by methods outside its central authority (e.g., by
 4 mail or personal service), which is a mistake.

5 This is evidenced not only by the official and binding declaration filed by
 6 Mexico, but also from the other “courtesy” translation of the same declaration into
 7 French, which does not contain the additional words present in the English
 8 translation. The French translation makes clear that Mexico objected to all
 9 methods of service other than through its central authority.

10 A side-by-side comparison of the original Mexican declaration related to
 11 Article 10 with the English and French “courtesy” translations illustrates the point:
 12

SPANISH TEXT	ENGLISH TRANSLATION	FRENCH TRANSLATION
V. En relación con el artículo 10, los Estados Unidos Mexicanos no reconocen la facultad de remitir directamente los documentos judiciales [*] a las personas que se encuentren en su territorio conforme a los procedimientos previstos en los incisos a), b) y c); salvo que la Autoridad Judicial conceda, excepcionalmente, la simplificación de formalidades distintas a las nacionales, y que ello no resulte lesivo al orden público o a las garantías individuales. La petición deberá contener la descripción de las formalidades cuya aplicación se solicita para diligenciar la notificación o traslado del documento.	V. In relation to Article 10, the United Mexican States are opposed to the direct service of documents <i>through diplomatic or consular agents</i> to persons in Mexican territory according to the procedures described in sub-paragraphs a), b) and c), unless the Judicial Authority exceptionally grants the simplification different from the national regulations and provided that such a procedure does not contravene public law or violate individual guarantees. The request must contain the description of the formalities whose application is required to effect service of the document.	V. Se référant à l'article 10, les États Unis Mexicains ne reconnaissent pas la faculté d'adresser directement les actes judiciaires [*] aux personnes se trouvant sur leur territoire conformément aux procédures prévues aux paragraphes a), b), et c), sauf si autorité judiciaire accepte, de façon exceptionnelle, la simplification de formalités différentes des formalités nationales et que ceci ne contrevienne pas à l'ordre public ni aux garanties individuelles. La demande devra contenir la description des formalités dont l'application s'impose pour exécuter la signification ou la notification de l'acte.

1 Compare Ruga Decl., Ex. D at p. 69 with Ruga Decl., Ex. D at p. 71 and Ruga
 2 Decl., Ex. D at p. 72.

3 The unofficial English translation erroneously inserts the phrase “through
 4 diplomatic or consular agents” that is not present in the official Spanish text. The
 5 asterisks in the above comparison indicate where one would expect to find phrases
 6 in Spanish (“por medio de sus agentes diplomáticos o consulares”) and French
 7 (“par les soins de leurs agents diplomatiques ou consulaires”) corresponding to the
 8 English highlighted text. As revealed by the chart, that language *does not appear*
 9 *anywhere* in either the original Mexican declaration or the French translation of the
 10 same. *Id.*⁶

11 Again, the correct translation is that Mexico is “opposed to the direct
 12 service of documents to persons in Mexican territory according to the procedures
 13 described in sub-paragraphs a), b) and c)”, with paragraphs a), b) and c) referring
 14 to service by mail and personal service. The erroneous interpretation states that
 15 Mexico is “opposed to the direct service of documents **through diplomatic or**
 16 **consular agents** to persons in Mexican territory according to the procedures
 17 described in sub-paragraphs a), b) and c)”, inserting the phrase “**through**
 18 **diplomatic or consular agents**,” which appears nowhere in the Mexican
 19 declaration.

20 As explained below, this error has caused some courts and even the State
 21 Department to be misled into believing that Mexico has not opted out of the “direct

23 ⁶ The French translation of the Mexican Declarations related to Article 10 also was prepared by
 24 the Ministry of Foreign Affairs of the Netherlands. The French translation correctly states that
 25 Mexico objects to all forms of alternative methods of service under Article 10. Accordingly, if
 26 the erroneous English translation is not corrected, it will lead to an absurd result whereby
 27 individuals in the United States are permitted to serve Mexican residents by personal service and
 28 mail, but individuals in France cannot because the French translation is accurate.

1 service . . . according to the procedures described in sub-paragraphs a), b) and c)"',
 2 which is directly contrary to what the Mexican declaration states.

3 Not only does the foregoing comparison (between the actual Mexican
 4 declaration, the French translation and the English translation) leave no room for
 5 doubt that the "courtesy" English translation of Mexico's declaration related to
 6 Article 10 is incorrect, but the following *certified* English translation of Mexico's
 7 declaration related to Article 10 clarifies that Mexico *objected to all forms of*
 8 *alternative service* under Articles 10(a)-(c), whether or not it is accomplished
 9 through diplomatic or consular agents:

10
 11 In relation to **Article 10**, the United Mexican States are *opposed to the*
12 direct service of documents to persons in Mexican territory according
13 to the procedures described in sub-paragraphs a), b) and c), unless
14 the Judicial Authority exceptionally grants the simplification different
15 from the national regulations and provided that such a procedure does
not contravene public law or violate individual guarantees. The
request must contain the description of the formalities whose
application is required to effect service of the document.

16 Ruga Decl. at Ex. H, p. 126 (certified translation of original Mexican declaration)
 17 & Ruga Decl. at Ex. F, p. 92 (Campbell, p. 17) ("Mexico's objection is an across-
 18 the-board objection to any use of the Article 10 alternative channels of service.").

19 E. The Erroneous "Courtesy" English Translation Has Confused
 20 Even The State Department and Various State Courts Relying
 21 Upon the State Department Website, a Fate Which Should Not Be
 22 Repeated Here

23 The incorrect "courtesy" English translation has even caused confusion on
 24 the State Department's website. On one hand, the State Department's Foreign
 25 Affairs Manual (FAM), available on its website, correctly states that service of
 26 process in Mexico by registered mail is prohibited because Mexico lodged
 27 objections to Article 10(a) of the Convention. Ruga Decl., Ex. G at pp. 103-04 &
 28 106-22 (7 FAM 951, available at <http://www.state.gov/documents/organization/>

1 86743.pdf (last visited March 10, 2009)). The “International Judicial Assistance in
 2 Mexico” section of the State Department website, however, inconsistently states
 3 that service may be accomplished by international registered mail or by personal
 4 service because “[t]here is no provision in Mexico law specifically prohibiting
 5 service” in these ways. Ruga Decl., ¶ 9 & Ex. E at pp. 73-75 (printout of
 6 http://travel.state.gov/law/info/judicial/judicial_677.html (last visited March 10,
 7 2009)). It should be emphasized that the Mexican declaration is the document that
 8 controls, not the unofficial “courtesy” translations or any website.

9 Despite the fact that the State Department’s website is not authority and
 10 lacks the force of law, *Alyssa F. v. Christina R.*, 112 Cal. App. 4th 846, 855 n.10
 11 (2003); *Casa de Cambio Delgado, Inc. v. Casa de Cambio Puebla, S.A. de C.V.*,
 12 196 Misc. 2d 1, 7 (N.Y. Supr. Ct. 2003), several courts have cited it in support of
 13 their conclusion that Mexico does not object to alternative methods of service
 14 under Articles 10(a)-(c).⁷ *See, e.g. Alyssa F.*, 112 Cal. App. 4th at 854 (citing State
 15 Department website and concluding that “Mexico apparently does not prohibit
 16 service on a person by registered mail.”); *NSM Music, Inc. v. Alvarez*, 2003 WL
 17 685338 at *2 (N.D. Ill., Feb. 25, 2003) (“Mexico does not appear to have a
 18 prohibition on service by registered mail, at least according to a U.S. State
 19 Department Web site.”).

20 For example, in *Casa de Cambio Delgado*, the plaintiff served the
 21 defendant—a Mexican corporation—in Mexico by personal service through a
 22 Mexican attorney. *Casa de Cambio Delgado*, 196 Misc. 2d at 3-4. The defendant
 23 subsequently filed a motion to dismiss on the grounds that service was not proper
 24 under the Hague Convention. *Id.* at 4. The defendant argued that Mexico objected
 25 to Articles 10(a)-(c) of the Convention and, therefore, service only could be

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 27 ⁷ None of these cases, however, acknowledged that the information provided by the State
 28 Department is internally inconsistent and therefore not reliable.

1 accomplished by transmitting the request to the Central Authority in Mexico.

2 *Id.* at 4.

3 The court in *Casa de Cambio Delgado* began its analysis by recognizing that
 4 *service under the Hague Convention was mandatory* because the defendant was a
 5 Mexican corporation that could not be served in the United States. *Id.* at 5. Next,
 6 the court considered Article 10 of the Convention and observed that, because
 7 “service by mail is not at issue in this case, the service at issue must be found to
 8 comport with article 10(b) and (c).” *Id.* at 6. The court then considered whether
 9 Mexico objected to Articles 10(b) and (c), but it looked *only at the mistaken*
 10 *English translation* rather than at the original Spanish text. *Id.* at 6. Based on the
 11 mistaken English translation, the court concluded that “the declaration by Mexico
 12 regarding article 10 addresses only direct service of documents **through**
 13 **diplomatic or consular agents** to persons in Mexican territory, *and is silent* as to
 14 any other form of service under article 10(b) and (c) of the Hague Convention.”
 15 *Id.* at 7 (emphasis added). The court then cited the State Department’s website to
 16 confirm this interpretation of the Mexican declaration. *Id.* Not surprisingly, the
 17 court denied the defendant’s motion and explained: “Although Puebla argues that
 18 service can only be effectuated under the Hague Convention through Mexico’s
 19 Central Authority, such an argument would render article 10 and Mexico’s
 20 declaration thereunder superfluous.” *Id.* at 8.

21 Ironically, the *Casa de Cambio Delgado* court acknowledged that Mexico
 22 could have objected to all forms of service under Article 10 of the Convention by
 23 making “an outright objection as did other countries.” *Id.* at 8 (*citing Wood v.*
 24 *Wood*, 231 A.D.2d 713 (N.Y. Supr. Ct. 1996) (quashing personal service on a
 25 German resident under the Hague Convention because “Germany filed an
 26 objection to article 10 and declared that service under it shall not be effected.”)).
 27 Of course, as explained above, Mexico *did* make an outright objection to Article 10
 28 but the objection has been mistakenly translated. *See* Ruga Decl., Ex. B at p. 26

1 (Mexico's official declarations) & Ruga Decl. at Ex. F, p. 92 (Campbell, p. 17)
2 ("Mexico's objection is an across-the-board objection to any use of the Article 10
3 alternative channels of service.").

4 Like *Casa de Cambio Delgado*, the court in *Alyssa F.* also was misled by the
5 State Department's website. In *Alyssa F.*, the San Diego County Health and
6 Human Services Agency (the "Agency") served the defendant with process in
7 Mexico via first class mail. *Alyssa F.*, 112 Cal. App. at 851. The defendant
8 challenged service and argued that it was improper under the Hague Convention.
9 *Id.* at 852. The court cited the State Department's website in support of its
10 observation that "Mexico apparently does not prohibit service on a person by
11 **registered mail**," *id.* at 854-55 & n.10 (emphasis added), but nevertheless
12 concluded that service by "**ordinary mail**" is insufficient. *Id.* at 855 (emphasis
13 added). The court thus quashed the Agency's service because it was accomplished
14 by ordinary, rather than registered, mail. *Id.* at 854-55.

15 Although the *Alyssa F.* court reached the correct result, it was misled by the
16 State Department's inconsistent website into believing that Mexico does not object
17 to service of process on its citizens by registered mail. The result in *Alyssa F.*
18 should not have been determined by the distinction between registered and
19 ordinary mail; neither is acceptable under a proper translation of Mexico's
20 declaration in relation to Article 10 of the Hague Convention. Ruga Decl. at Ex.
21 H, p. 126 & Ruga Decl. at Ex. F, p. 92 (Campbell, p. 17) ("Mexico's objection is
22 an across-the-board objection to any use of the Article 10 alternative channels of
23 service.").

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1 F. The Proper Interpretation of Mexico's Declarations is an Open
 2 Issue in This Circuit; This Court is Not Bound and Should Not
 3 Repeat the Mistakes of Other State Courts

4 Ninth Circuit has yet to consider Mexico's objection to Article 10 of the
 5 Convention. Thus, the proper interpretation of this document is an open issue for
 6 this Court.

7 The Court should not repeat the mistakes of these other state courts. The
 8 Supreme Court has mandated that courts apply treaties **as written**. *Sanchez-*
 9 *Llamas v. Oregon*, 548 U.S. 331, 346 (2006). Indeed, interpreting a treaty in a
 10 manner that is inconsistent with the original text is "entirely inconsistent with the
 11 judicial function." *Id.* (*citing The Amiable Isabella*, 6 Wheat. 1, 71 (1821) ("To
 12 alter, amend, or add to any treaty, by inserting any clause, whether small or great,
 13 important or trivial, would be on our part an usurpation of power, and not an
 14 exercise of judicial functions. It would be to make, and not to construe a treaty.")).

15 Accordingly, this Court should enforce Mexico's declarations to the Hague
 16 Convention as written, which clearly includes an objection to *all forms of*
 17 *alternative methods of service* under Article 10, except through its Central
 18 Authority. (Ruga Decl., ¶ 7, Ex. C (certified copy of English translation of
 19 Mexico's declaration related to Article 10)). Provided with the governing
 20 document – the actual Mexican declaration and certified translation thereto – the
 21 Court should not turn a blind eye; rather, the Court should give full force and effect
 22 to the Mexican declaration, as it is empowered to do and, in fact, charged to do
 23 under the law. *Todok v. Union State Bank of Harvard, Neb.*, 281 U.S. 449, 453
 24 (1930) (rejecting an English translation and explaining that "[t]he text of the treaty
 25 of 1783 with Sweden was in French only, and the French text is therefore
 26 controlling."); *see also* Ruga Decl. at Ex. F, p. 87 (Campbell, p. 15 (quoting Jean
 27 Hardy, *The Interpretation of Plurilingual Treaties by International Courts and*
 28 *Tribunals*, 37 BRIT. Y.B. INT'L L. 72, 136 (1961) ("Whether prepared by the

1 contracting parties themselves, by an international body, or by a single contracting
2 or non-contracting State, official translations have in principle no value at the
3 international level and **in case of divergence between authentic or official texts**
4 **and official translations the former must automatically prevail.”**) (internal
5 brackets omitted) (emphasis added)).

6 **V. CONCLUSION**

7 There is no dispute that the Hague Convention must be complied with to
8 effect proper service on Televisa. There is also no dispute that Mexico had the
9 right to object to any method of service other than through their Central Authority.

10 The only issue is whether Mexico did in fact file such an objection; if it did,
11 then the purported service upon Televisa is deficient because Plaintiffs admittedly
12 did not serve Televisa through Mexico’s Central Authority.

13 The official Mexican declaration makes clear that Mexico objected to any
14 method of service other than through its Central Authority.

15 At a minimum, Plaintiffs, who bear the burden of proof to establish proper
16 service, cannot satisfy their burden; the letters of the Mexican declaration make it
17 clear (albeit in Spanish) that any method of service other than through Mexico’s
18 Central Authority is prohibited.

19 Indeed, if the erroneous translation is not corrected, it will lead to an absurd
20 result whereby individuals in the United States are permitted to serve Mexican
21 residents by personal service and mail, but individuals in France cannot because
22 the French translation is accurate.

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1 For these reasons, Televisa respectfully requests that the Court grant the
2 instant motion to dismiss.

3 Dated: March 16, 2009

4 STEPTOE & JOHNSON LLP
5 Seong Kim
6 Dylan Ruga

7 By: _____ /S/
8 DYLAN RUGA
9 Attorneys for Specially-Appearing
10 Defendant
11 Televisa, S.A. de C.V.

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